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October 5, 2007

VIA HAND DELIVERY

REDACTED – FOR PUBLIC INSPECTION

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554

Re: WC Docket No. 06-172: In the Matter of the Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas

Dear Ms. Dortch:

Covad Communications Group, NuVox Communications and XO Communications, LLC (the "CLEC Parties"), through counsel, submit for filing in the above-referenced proceeding the following documents of record before the Commission in the *Matter of Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control* (WC Docket No. 05-75).

- Letter from Thomas Cohen, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (enclosing Wholesale Communications Strategies, The Yankee Group, prepared for XO Communications, January 2004 , pp. 1-13, 31) (Sept. 21, 2005).
- Letter from Brad E. Mutschelknaus, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 22, 2005).
- Letter from Thomas Cohen, Kelley Drye & Warren LLP to Marlene Dortch, Secretary, Federal Communications Commission (enclosing HIGHLY CONFIDENTIAL materials

Marlene Dortch, Secretary
Federal Communications Commission
October 5, 2007
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requested by Commission Staff on pricing of wholesale services by MCI and Verizon) (Oct. 17, 2005).¹

- Letter from Brad Letter from Brad E. Mutschelknaus, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 18, 2005).

These prior filings by the CLEC Parties demonstrate that the merger of Verizon Communications Inc. ("Verizon") and MCI, Inc. ("MCI") eliminated from the market for wholesale services the largest source of actual and potential competition to special access services offered by Verizon. Therefore, as forecasted by the CLEC Parties, the Verizon/MCI mega-merger removed downward pressure on the pricing of Verizon's special access services, and in turn, caused declining rates to stabilize, or even to increase.

The record before the Commission in *Matter of Verizon Communications Inc. and MCI, Inc., Applications for Approval of Transfer of Control* reveals that MCI was the most formidable, if not the only competitor to Verizon within the market for wholesale services pre-merger. Of particular importance, MCI's wholesale service offerings undercut Verizon's pricing of special access services up to eighty percent (80%),² exerting significant downward pressure on Verizon's pricing of special access services.³

By acquiring MCI, Verizon eliminated the largest source of competition to its special access services, and seized control of eighty-five percent (85%) of the market for wholesale metro private

¹ Please note, this document is redacted for public inspection, pursuant to the Second Protective Order in the above-referenced proceeding. As required by the Second Protective Order, unredacted copies of this document also have been filed with the Commission Secretary, and submitted to Gary Remondino of the Wireline Competition Bureau, under separate cover. See *In the Matter of the Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Order, DA 07-208 (rel Jan. 25, 2007).

² Letter from Brad Letter from Brad E. Mutschelknaus, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 18, 2005) at 1. See also, Letter from Thomas Cohen, Kelley Drye & Warren LLP to Marlene Dortch, Secretary, Federal Communications Commission (enclosing HIGHLY CONFIDENTIAL materials requested by Commission Staff on pricing of wholesale services by MCI and Verizon) (Oct. 17, 2005).

³ Letter from Brad E. Mutschelknaus, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 22, 2005) at 2.

KELLEY DRYE & WARREN LLP

Marlene Dortch, Secretary
Federal Communications Commission
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line services within its operating region.⁴ Moreover, as the CLEC Parties forecasted, no other source of meaningful competition has emerged post-merger.⁵ By effectively removing wholesale competition by MCI from the market, downward pressure on Verizon's pricing of special access services has been relieved, and once declining rates for Verizon's special access services have stabilized.⁶ This situation likely is to only worsen, when the merger conditions that require Verizon to temporarily maintain certain legacy MCI wholesale special access pricing expire next summer. Thus, the merger of Verizon and MCI, and the corresponding merger of AT&T Corp. and SBC Communications Inc., have eliminated the primary sources of actual and potential competition to the special access services provided by the Regional Bell Operating Companies ("RBOCs"), making it unrealistic to expect that market forces will constrain pricing of special access services by the incumbent LECs in the foreseeable future.

Respectfully submitted,


Brad E. Mutschelknaus

cc: Daniel Gonzalez
Ian Dillner
Scott Deutchman
Scott Bergmann
Chris Moore
John Hunter
Dana Shaffer

⁴ Letter from Thomas Cohen, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (enclosing Wholesale Communications Strategies, The Yankee Group, prepared for XO Communications, January 2004 , pp. 1-13, 31) (Sept. 21, 2005), Attachment at 13.

⁵ See *supra* n. 3.

⁶ *U.S. v. SBC Communications, Inc. and AT&T Corp.*, Civil Action No. 1:05CV02102 (EGS); *U.S. v. Verizon Communications, Inc. and MCI, Inc.*, Civil Action No. 1:05CV02103 (EGS) (consolidated), ActTel's Reply Memorandum in Opposition to the United States' Motion for Entry of Final Judgments (filed Jun. 6, 2006) at 17-19 (and associated Exhibit).

REDACTED – FOR PUBLIC INSPECTION

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September 21, 2005

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 - 12th Street, SW
Washington, DC 20554

**Re: SBC/AT&T Application – WC Docket No. 05-65;
Verizon/MCI Application – WC Docket No. 05-75**

Dear Ms. Dortch:

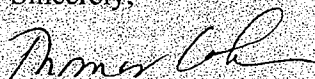
Throughout the Commission's proceedings to review the proposed mergers of SBC/AT&T and Verizon/MCI, the Applicants have contended that AT&T and MCI are not major suppliers of wholesale loop and transport circuits in the local market. XO Communications and other local competitive providers have strenuously disputed this contention and have submitted extensive data based on actual market bids and agreements to the Department of Justice pursuant to Civil Investigative Demands demonstrating unequivocally that AT&T and MCI are the two leaders among competitive providers offering local wholesale circuits and these data provide elaborate detail on the prices offered by these two companies and their overall competitive effect on the market. XO urges the Commission to go the Department of Justice to review these submissions and, as already orally indicated to the Commission staff, it will provide the necessary waiver to facilitate this. In the meantime, XO is submitting portions of a survey and research report prepared for it by The Yankee Group on Wholesale Communications Strategies that supports XO's claim that about the substantial competitive presence of AT&T and MCI in the local wholesale market.

The January, 2004 survey and research report by the Yankee Group is based on overall market data and interviews with wholesale buyers in the U.S. in the third quarter of 2003 about their purchases in various market segments, including local private line – which is the service purchased by the largest percentage of respondents. In this local private line market, which had

addressable revenues of approximately \$13B in 2003 and is expected to grow between 4%-5% per year, the survey and report concludes that **other than the RBOCs, MCI has the largest market share of the wholesale metro private line market in the U.S. (10%) and AT&T has the second largest share (9%).** This means that AT&T and MCI each have revenues in excess of \$1B for these markets – which is far from the insignificant sum alleged by the Applicants. It also is critical to note that AT&T's and MCI's competitive presence is even greater than these market shares indicated because they offer these wholesale circuits in the very areas where the under the rule adopted in the Triennial Review Remand Order loop and transport UNEs are delisted. The survey and report then states, "RBOCs dominate metro private line, as expected. Tier 1 metros experience enormous competition, however." As indicated above – and as demonstrated by evidence submitted by XO and others – this competition comes principally from AT&T and MCI, and this is the very competition that will be lost if these mergers are approved by the Commission.

If the FCC permits the largest incumbent local exchange carriers – SBC and Verizon – to merge with their principal and significant competitors in the local wholesale market, customers are certain to suffer dramatically. The Commission has an obligation because of these circumstances to reject the proposed mergers. If it determines there are conditions that might alleviate these harms, it then must find they are sufficiently stringent and enforceable to ensure that customers find themselves in the same competitive position after the mergers as before.

Sincerely,



Thomas W. Cohen
Kelley Drye & Warren LLP
1200 19th Street, NW – Ste. 500
Washington, DC 20036

Counsel for:

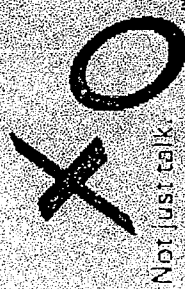
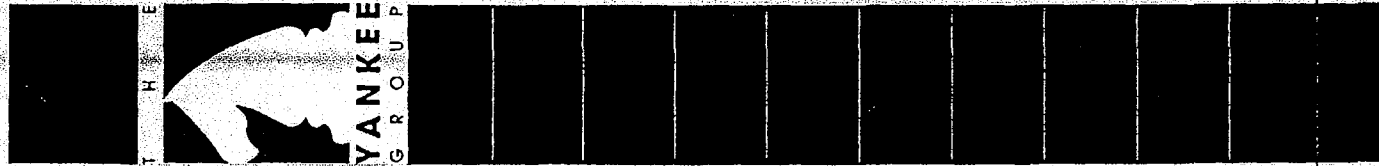
XO COMMUNICATIONS

Enclosure: Wholesale Communications Strategies, The Yankee Group, Prepared for XO Communications, January, 2004, pp. 1-13, 31

cc: Chairman Kevin Martin
Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Daniel Gonzalez
Michelle Carey
Russ Hanser
Jessica Rosenworcel

Marlene H. Dortch
September 21, 2005
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Scott Bergmann
Sam Feder
Thomas Navin
Jonathan Levy
Julie Veach
Bill Dever
Marcus Maher
Don Stockdale
Gail Cohen



Wholesale Communications Strategy Session:

Survey Results and Research Overview

Prepared for XO Communications

January, 2004

J. P. Gownder

Senior Analyst

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Wholesale Communications Strategies
The Yankee Group

Agenda

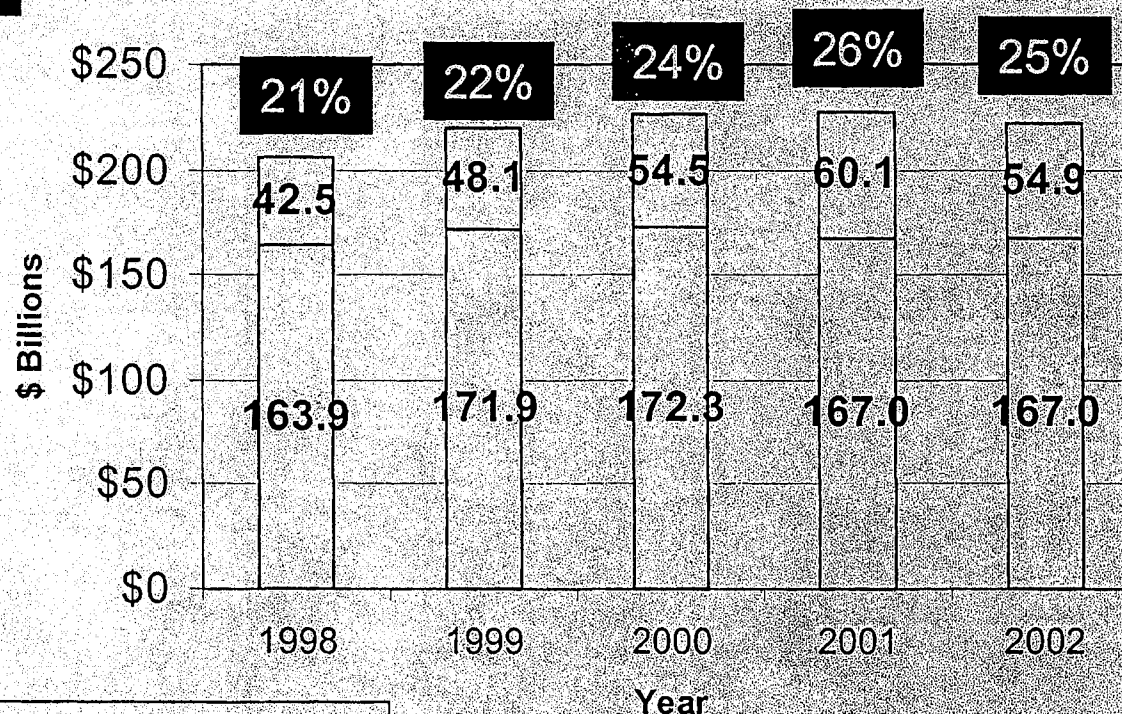
- **Wholesale Communications Services Introduction**
- **Survey Results and Analysis**
- **Supply Side Research**
- **Recommendations for XO Communications**
- **Future Survey Initiatives**



Wholesale revenue forms a large share of the overall U.S. telecommunications services market

% of Wireline Market

U.S. Wireline Wholesale and Retail Revenues



Wholesale CAGR 1998 to 2002 6.6%
 Retail CAGR 1998 to 2002 0.5%
 Combined CAGR 1998 to 2002 1.8%

□ Retail □ Wholesale



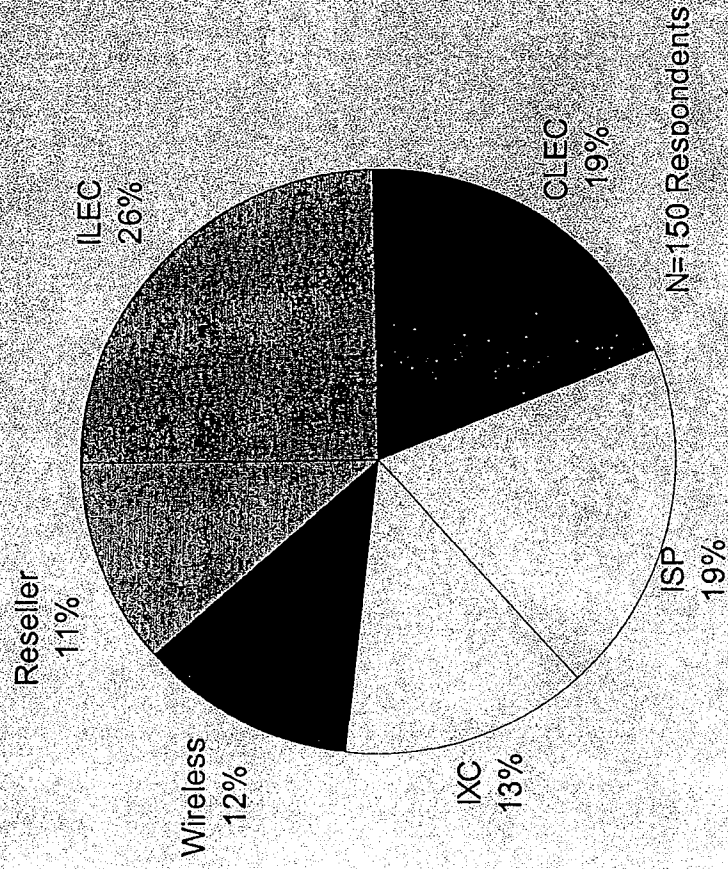
The Yankee Group conducted a survey of wholesale buyers in the U.S. in 3Q 2003

- The survey gauges the state of the U.S. wholesale market from the perspective of significant wholesale customers
- Respondents included 150 buyers of wholesale services from CLECs, ISPs, ILECs, Resellers, Wireless Operators and IXCs.
- The survey focuses on demand and purchases of dark fiber, SONET private line bandwidth, Ethernet, and wavelengths in metro and long haul markets.
- The study captures motives, demand, and buying behavior including:
 - What drives demand for wholesale services?
 - What services customers are buying?
 - Why they are buying?
 - How they are buying ?
 - Who they are buying from?
 - Where carriers are falling short of customer expectations?
 - Which carriers are excelling; which are falling short?
 - To what extent has their purchasing activity/demand changed in the past year?
 - How do they expect their purchasing to change in the coming years?



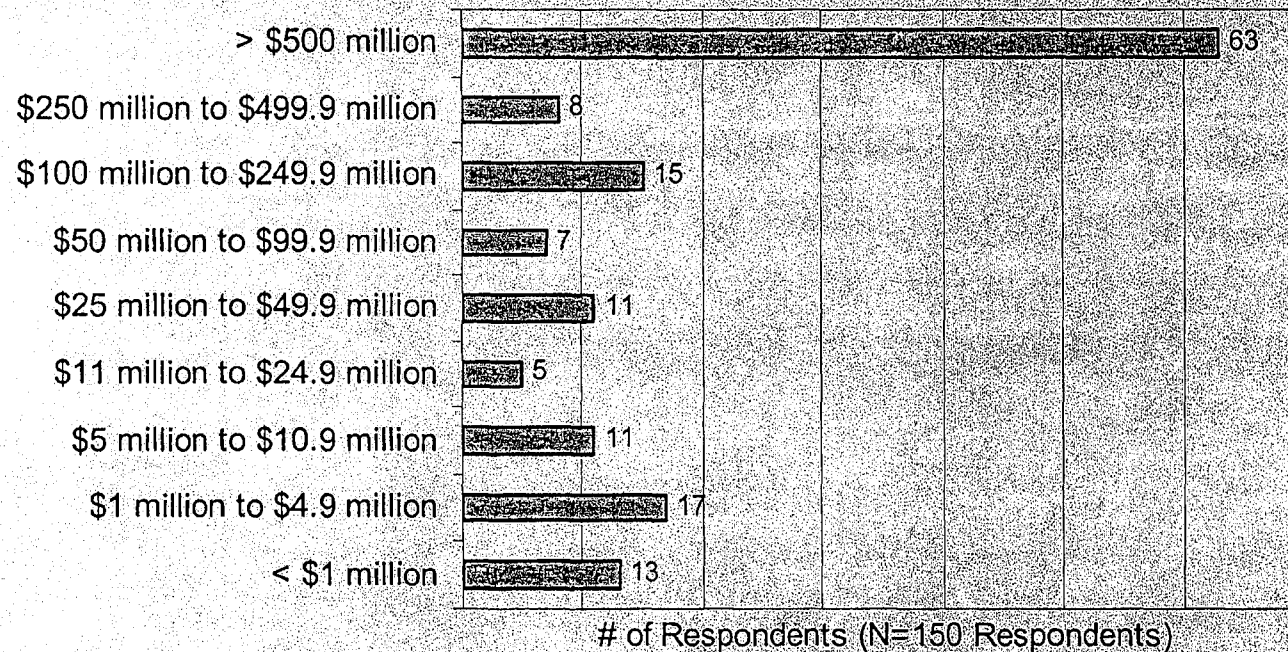
Survey respondents hail from diverse customer segments

What is your primary business type?



Survey respondents span a variety of company sizes

What is your organization's annual revenue?

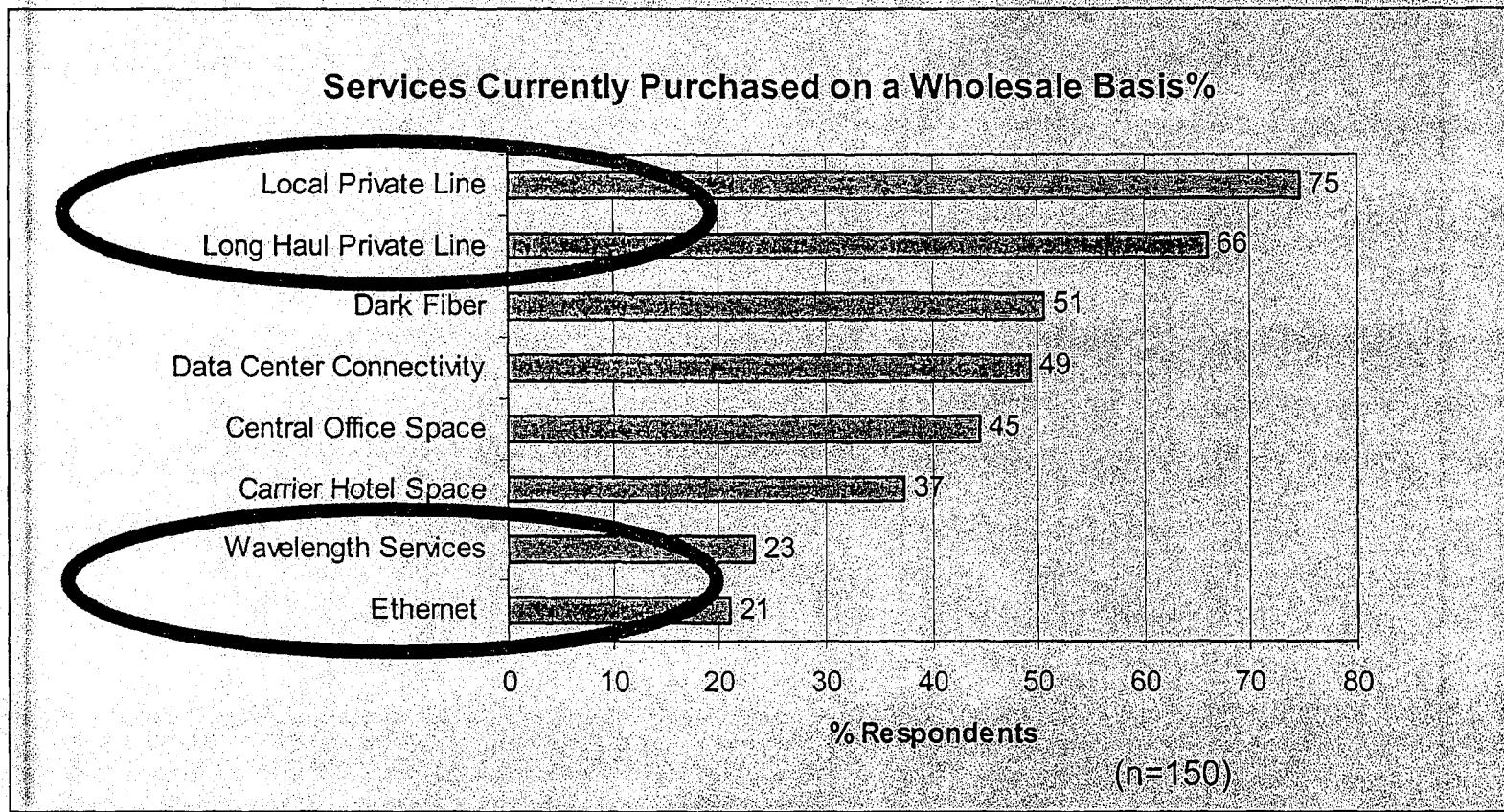


Agenda

- Wholesale Communications Services Introduction
- Survey Results and Analysis
- Supply Side Research
- Recommendations for XO Communications
- Future Survey Initiatives



Purchases: Local and long haul private line remain most popular wholesale purchases

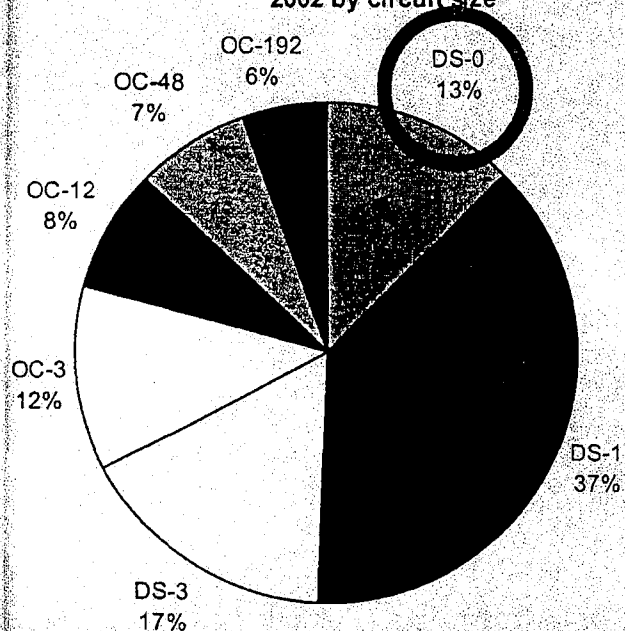


Private lines remain the “work horse” of the wholesale sector, while wavelengths and Ethernet remain nascent.



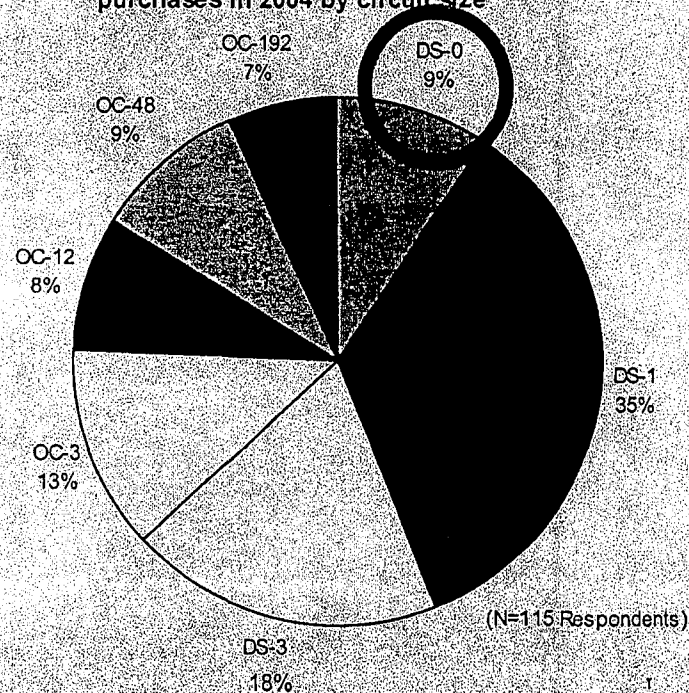
Capacity: Demand by circuit remains relatively consistent from 2002 to 2004

Please estimate a breakdown of you wholesale private line purchases in 2002 by circuit size



(N=116 Respondents)

Please estimate a breakdown of you wholesale private line purchases in 2004 by circuit size



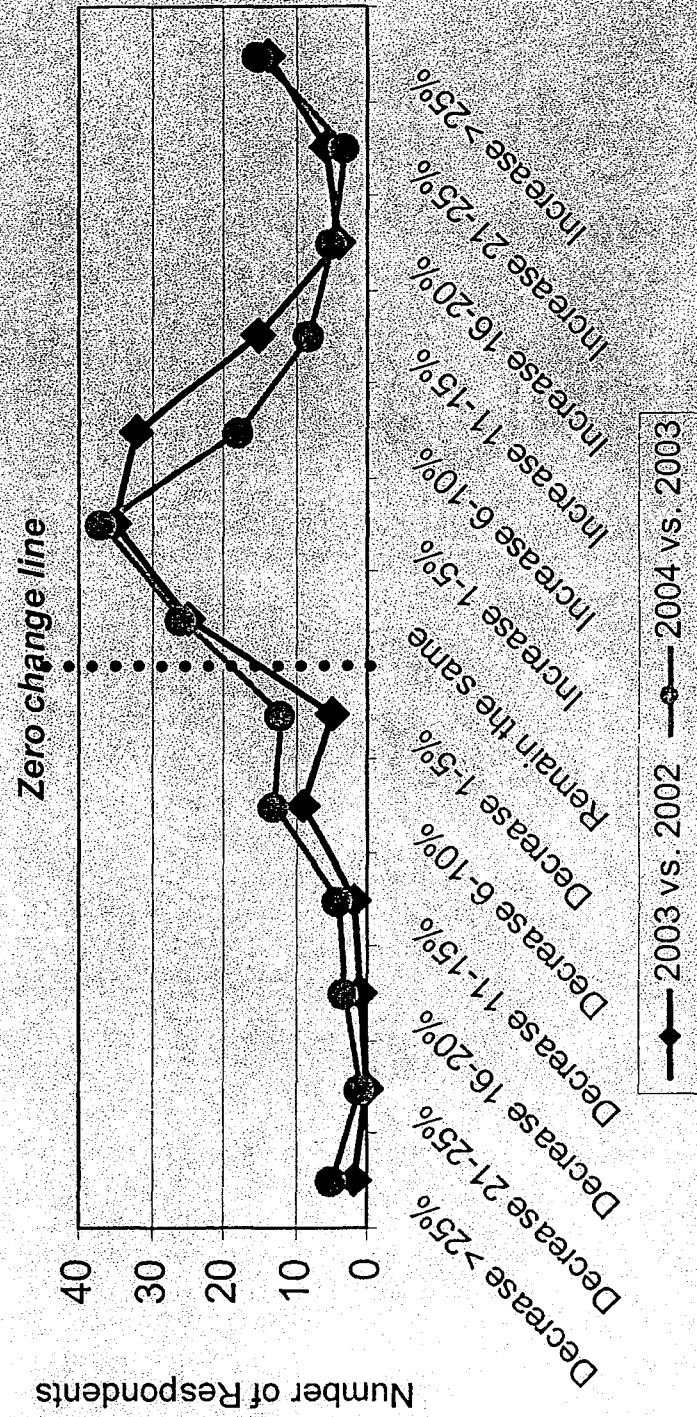
(N=115 Respondents)

Private line capacity is increasing incrementally, mostly at the expense of DS-0 circuits.



Demand (Introduction): Buyers of wholesale services are cautiously increasing demand

How will your overall purchases of wholesale services change?



A majority of carriers report increasing their wholesale spending.



Demand: Overall Wholesale and Private Line Growth Rates by Segment and Year

Wholesale Growth by Carrier Segment	Overall (All Segments)	ILECs	CLECs	IXCs	Resellers	ISPs	Wireless
2002 to 2003 growth in overall wholesale purchases	2.8%	1.3%	5.6%	-0.4%	0.1%	5.8%	2.9%
2003 to 2004 growth in <u>overall</u> wholesale purchases	5.2%	2.9%	7.1%	3.5%	4.6%	3.9%	3.9%
2002 to 2003 growth in private line wholesale purchases	1.9%	0.8%	2.7%	1.1%	-2.6%	5.9%	-0.3%
2003 to 2004 growth in <u>private line</u> wholesale purchases	4.4%	3.2%	4.0%	4.5%	3.1%	7.3%	3.3%
Sample size in survey		n= 37	n=29	n=20	n=17	n=29	n=18

Source: The Yankee Group, Wholesale Communications Strategies, 2003

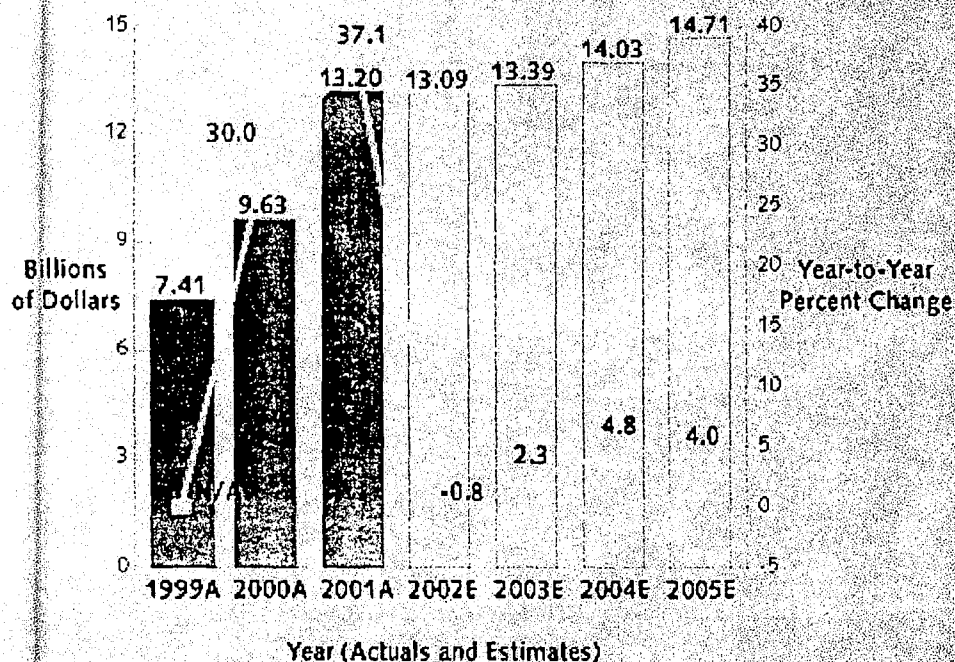
Key Themes

- ❖ Growth in wholesale from 2003-2004 exceeds that of 2002-2003, suggesting a bright outlook for the wholesale sector.
- ❖ Private line purchasing expected to reach a robust 4.4% growth.
- ❖ Surviving CLECs and ISPs will account for strong demand, alongside IXCs.



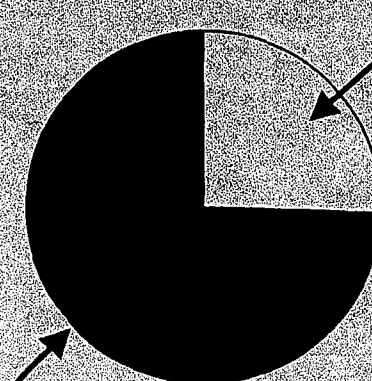
2004 Wholesale Metro Private Line Forecast

Forecast of Wholesale Metro Private Line
Market Revenue, 2002 to 2005



Portion of Wholesale Market

Metro Private Line: \$14b (34%)



**Total
Wholesale
= \$55 B**

Other Wholesale: \$41b (66%)



Wholesale Metro Private Line Market Share

RBOCs	BellSouth	Qwest	SBC	Verizon
Incumbent-geography market shares	74%	74%	75%	74%
In-region market shares (includes other ILECs)	54%	63%	58%	64%
Addressable metro private line market in-region (\$ Billions)	2.584	1.478	5.487	3.615

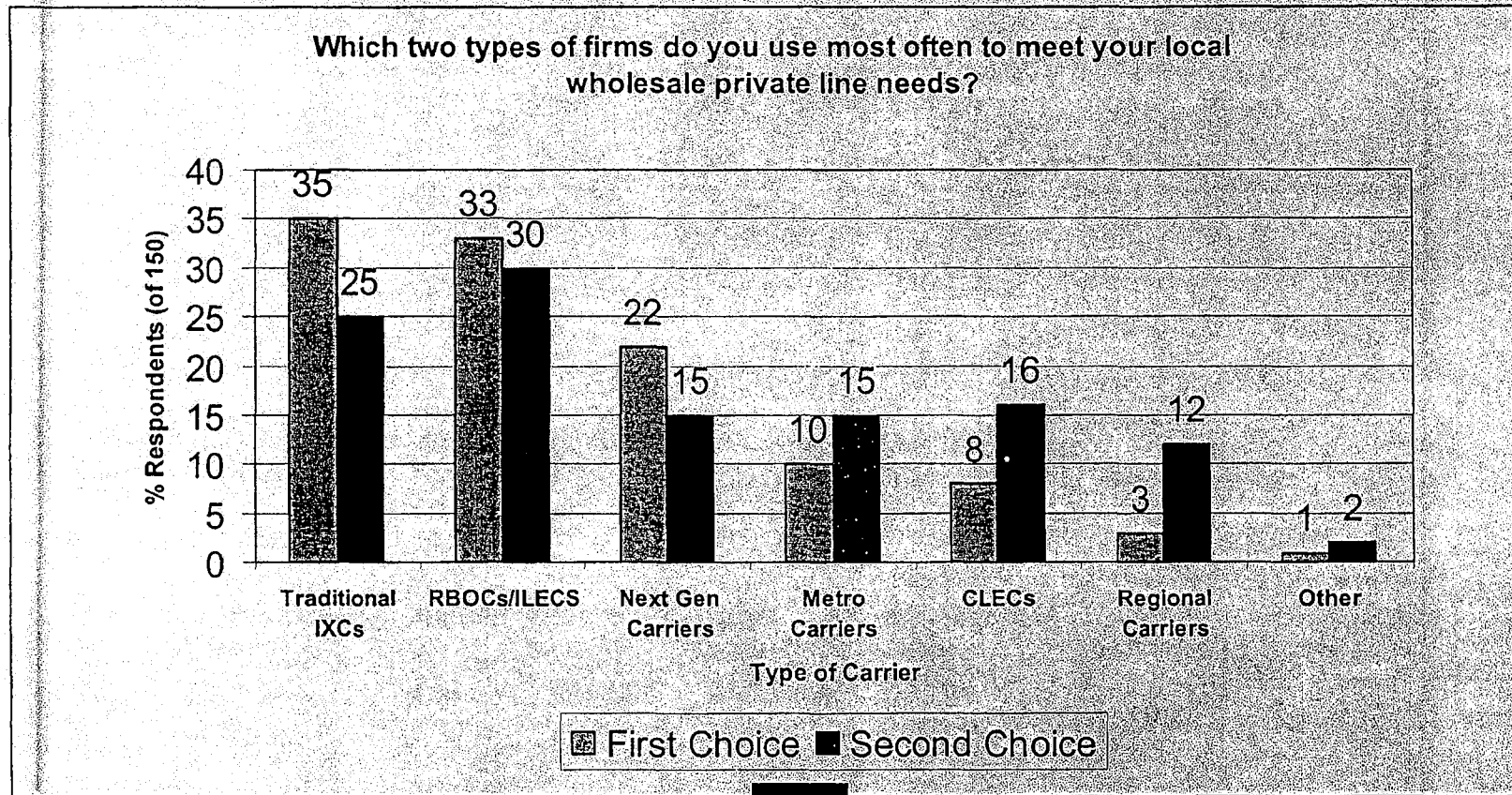
Other Players	Notes
MCI	Market share ranking #1 outside of RBOCs; approximately 10% across all metros
AT&T	Market share ranking #2 outside of RBOCs; approximately 9% across all metros
Other ILECs	Comprise a large market share in regions where they are incumbent, usually Tier 2 to 4 areas
CLECs, Carrier's Carriers, Sprint	Very competitive in Tier 1 metros; varying competitiveness in Tier 2 to 4 areas

RBOCs dominate metro private line, as expected. Tier 1 metros experience enormous competition, however.



Buyer Choices:

IXCs and ILECs lead local wholesale private line market



Buyers tell us they'd rather not buy from the RBOC, but that competitors lag in availability.



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September 22, 2005

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 - 12th Street, SW
Washington, DC 20554

Re: **SBC/AT&T Merger Application - WC Docket No. 05-65;**
Verizon/MCI Merger Application - WC Docket No. 05-75

Dear Ms. Dortch:

In previous comments and ex parte submissions,¹ BridgeCom International, Broadview Networks, Conversent Communications, Eschelon Telecom, NuVox Communications, TDS Metrocom, XO Communications, and Xspedius Communications (the "Joint Commenters") have supplied the Commission with evidence regarding the

¹ See, *In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Petition to Deny of Cbeyond Communications, Conversent Communications, Eschelon Telecom, NuVox Communications, TDS Metrocom, XO Communications and Xspedius Communications, DA 05-656, WC Docket No. 05-65 (filed Apr. 25, 2005); *In the Matter of Verizon Communications, Inc. and MCI Corp. Applications for Approval of Transfer of Control*, Petition to Deny of Cbeyond Communications, Conversent Communications, Eschelon Telecom, NuVox Communications, TDS Metrocom, and XO Communications, DA 05-762, WC Docket No. 05-75, (filed May 9, 2005); Ex Parte Presentations of Simon Wilkie, Economist, WC Dockets Nos. 05-65 and 05-75, May 9, 2005, June 15, 2005, and Aug. 1, 2005. Ex Parte Letters from Brad E. Mutschelknaus, Kelley Drye & Warren LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dockets No. 05-65 and 05-75, June 6, 2005, July 14, 2005, and Aug. 31, 2005.

development and functioning of the local wholesale market for loops to end user locations and transport within metropolitan areas – a market that is taking on growing importance as Unbundled Network Elements (“UNEs”) are delisted and Incumbent Local Exchange Carrier (“ILEC”) special access rates continue to increase far in excess of cost, producing supranormal profits.² Further, the Joint Commenters have shown that AT&T and MCI – the two largest local competitors – play the critical, leading role in that market, causing prices to decrease significantly.³ The rates these two companies offer for local wholesale circuits are on average approximately 50% below the special access rate offered by SBC and Verizon, and, just as importantly, even if these two companies do not win the contract, their very presence causes rates offered by other providers to decrease to at least these levels. Further, it is clear that post-merger, other competitors would not “expand or enter with sufficient strength, likelihood and timeliness to render unprofitable an attempted exercise of market power resulting from the merger.”⁴ As a result, should the proposed SBC/AT&T and Verizon/MCI mergers be consummated – and AT&T and MCI no longer provide wholesale services – a working, viable wholesale market will be seriously harmed, and wholesale and retail business customers will suffer greatly. It is for that reason that the Commission should reject these proposed mergers. As proposed, they clearly do not serve the public interest, convenience and necessity. It is important to note that such a determination by the Commission is the norm for proposed mergers by Regional Bell Operating Companies (“RBOC”). Since the 1996 Act, every proposed acquisition by a RBOC of another major carrier has been found to be unlawful due to their likely anti-competitive effects.⁵

² See, e.g., Economics and Technology, Inc., *Competition in Access Markets: Reality or Illusion*, Prepared for the August, 2004 Ad Hoc Telecommunications Users Committee, WC Docket Nos. 05-65 and 05-75 at 27-40. See also, Ex Parte Letter from Patrick H. Merrick, Esq, Director-Regulatory Affairs, AT&T Federal Government Affairs to Marlene H. Dortch, Secretary, Federal Communications Commission, RM No. 10593 (May 1, 2003) (“there is indisputable proof that the large ILECs and particularly the Bells, retain market power in the provision of special access services, the ILECs are abusing that [market] power with unjust and unreasonable rates...”). See also, *In the Matter of Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Comments of MCI, Inc., WC Docket No. 04-313 and CC Docket No. 01-338, 154-62 (Oct. 4, 2004).

³ AT&T’s and MCI’s competitive presence is comprised of much more than the local network facilities of the two companies. Because of their substantial size, they are able to negotiate substantial term and volume discounts for special access circuits from SBC and Verizon. They also have enormous customer bases from their domestic and international long distance businesses that they can use to enter local markets, and, of course, since both are Fortune 100 companies, they have significant financial resources.

⁴ *Applications of NYNEX Corp. and Bell Atlantic Corp. For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985, ¶11 (1997) (“NYNEX/Bell Atlantic Merger Order”).

⁵ See generally, *GTE/Bell Atlantic Merger Order*, 15 FCC Rcd 14032 (2000); *SBC/Ameritech Merger Order*, 14 FCC Rcd 14712 (1999); *NYNEX/Bell Atlantic*

Despite a determination that the proposed mergers are not in the public interest, the Commission may decide to approve the transactions by using its authority pursuant to Section 214(c) of the Act to impose transaction-specific terms and conditions to remedy the anti-competitive effects of the proposed mergers. That was the approach used by the Commission in all prior RBOC mergers. If the Commission decides to once again use this approach, the Joint Commenters believe the following remedies taken together are vital, although not sufficient, to alleviate the competitive harm to the local wholesale market.

1. ENSURE RATES, TERMS, AND CONDITIONS FOR SPECIAL ACCESS CIRCUITS REFLECT PRE-MERGER MARKET CONDITIONS

As stated above, because of AT&T's and MCI's competitive presence, competitive providers are able to access loop and transport circuits at rates far below SBC's and Verizon's special access rates and upon terms and conditions that reflect competitive conditions. To ensure these market rates, terms, and conditions continue post-mergers, it is essential that the Commission adopt the following pricing and performance remedy.

For a five year period from the date the mergers are consummated (with a possible five year extension), providers of telecommunications services should have a right to choose to obtain special access circuits from SBC and Verizon at rates, terms, and conditions either (1) as set by the Commission based on a re-initialized rate of return of 11.25% calculated from 1999, or (2) as determined by commercial negotiations with a requirement that "baseball arbitration" be used if the negotiations fail.⁶

Merger Order, 12 FCC Rcd 19985 (1997); *Cingular/AT&T Wireless Merger Order*, 19 FCC Rcd 21522 (2004).

⁶ See, *In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors And The News Corporation Limited, Transferee, For Authority to Transfer Control*, Memorandum Opinion and Order, MB Docket No. 03-124, Appendices B and C (rel. Jan. 14, 2004) (The Commission employed the remedy of commercial negotiations with baseball arbitration). See, also, *GTE CORPORATION, Transferor and BELL ATLANTIC CORPORATION, Transferee For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, FCC 00-221, 15 FCC Rcd 14032 (June 16, 2000 Appendix D(VI), ¶19(b), "To the extent that Bell Atlantic/GTE and CLECs cannot reach agreement regarding the scope of the collaborative process, they may be resolved through arbitration process set forth in Paragraph 21."

Specifics of Access to Special Access Circuits at Reinitialized Rates:

The recalculated rate of return will be flowed through proportionately to rates for all services, and these rates will be maintained for the entire five year period. These rates will be available regardless of whether the provider purchases other services or facilities of SBC and Verizon, and the requesting provider will be able to terminate service at any time without incurring a penalty. Finally, to ensure competitors have non-discriminatory access, if the merging parties offer better rates or service arrangements to any affiliated entities, requesting providers may access those rates and arrangements.⁷

Specifics of Access to Special Access Circuits via Commercial Negotiations/Baseball Arbitration:

The arbitration would be conducted by the American Arbitration Association with strict time limits to reflect the need to meet normal commercial conditions. The final offers from both parties would be in the form of a contract for access services (including prices, terms and conditions, service level agreements, and performance remedies) for a minimum 1 year and maximum 5 year period with automatic renewals.⁸ The arbitrator would choose the final offer that most closely approximates the lowest (market) rates existing prior to the proposed mergers in the SBC and Verizon regions as offered by AT&T, MCI, or any other provider. If the telecommunications provider seeks in its final offer to continue a pre-merger agreement with AT&T or MCI for the provision of local wholesale services, that agreement shall automatically be adopted by the arbitrator.

⁷ As an alternative to replacing the existing special access tariffs, the Joint Commenters observe that neither SBC nor Verizon has yet fulfilled its statutory obligation to make a set of unbundled transport and loop UNEs available pursuant to Section 271 of the Act. *See*, 47 U.S.C. § 271(c)(2)(B)(iv)-(v). The Commission could require either: (1) SBC and Verizon to calculate what the rates for special access mileage and channel terminations would be if they were re-priced to provide a 11.25% rate of return and then order those rates to be offered regionwide as Section 271 UNEs; or, (2) SBC and Verizon to make a set of unbundled loop and transport Section 271 UNEs available region-wide at rates established at 115% of the existing Section 251 UNE rates, an approach the Commission found to be appropriate as a transitional rate mechanism and adopted as rules in the Triennial Review Remand Order. *See*, for UNE loops, 47 C.F.R. §§ 51.319 (a)(4)(iii) and (a)(5)(iii), and for UNE transport 47 C.F.R. §§ 51.319 (e)(2)(ii)(C), (e)(2)(iii)(D), and (e)(2)(iv)(B).

⁸ If, as part of its offer, the telecommunications provider seeks to convert UNE facilities to special access circuits, it shall be permitted to continue to use the UNE ordering platform.

2. ENSURE UNE AVAILABILITY AND PRICING REFLECT HARM CAUSED BY AT&T'S AND MCI'S EXIT FROM THE MARKET

Currently, providers of competitive services can order critical wholesale inputs (loops and transport) either as special access or as UNEs. Most competitive local service providers order these inputs as UNEs, particularly those serving small and medium sized businesses. To provide relief that is equally available to all competitive providers and to ensure competition in the provision of local services equivalent to pre-merger levels of competition, UNE access to these inputs must be maintained for a period of time comparable to the relief afforded with respect to special access.

A. Cap UNE Pricing

Prices for key UNE inputs (transport, high capacity loop circuits, and UNE-L loops) have been set after extensive state level proceedings. As with competitive wholesale services available prior to consummation of the proposed mergers, UNE prices for these inputs are substantially below special access prices. In addition, since the 1996 Act, AT&T and MCI have played the leading role in the lengthy and resource intensive state rate proceedings to establish rates for UNEs and in negotiating and arbitrating interconnection agreements ("ICAs"). If the mergers are consummated, the discipline previously imposed in the UNE rate setting process by the participation of AT&T and MCI will be lost. Remaining competitive providers should not be forced to relitigate UNE cost cases. They require stability in the regulatory environment to provide marketplace pricing discipline to "replace" the competition lost as a result of these mergers. Therefore, to remedy the demonstrable harm from the mergers, the Commission should cap UNE prices in the SBC and Verizon regions for a period of five years. In addition, parties who order loops (including high capacity and UNE-L loops) and transport elements via UNE processes, should have the continuing right to order via these processes, but should have the right to "opt out" of UNE prices and avail themselves of the commercial negotiation/arbitration process described above for special access services.

B. Freeze on Further UNE Delisting

The Commission has recently completed extensive proceedings that have established a going forward framework for UNE availability. This framework is critical for competitive providers to access remaining UNE inputs on a stable and predictable basis, and therefore to replicate competitive conditions prior to the mergers. Because AT&T and MCI dominated the competitive presence in local markets, if the proposed mergers are consummated, retail and wholesale business customers will suffer greatly and will be seeking to replicate their competitive presence as

rapidly as possible. But, the evidence demonstrates that the competitive presence of AT&T and MCI took many years to develop, that it is based upon their global strength and financial resources, and that the financial community is reluctant to fund new entry. Consequently, there is no reason to believe entry will be timely, likely, or sufficient. It is for that reason that the Commission must ensure there is stability in access to loop and transport UNEs, which competitive providers rely upon to fill out their networks. The Commission should adopt a condition that in the SBC and Verizon regions, at a minimum, the status quo ante (subject to the exception described below) with respect to UNE availability will be preserved for a period of five years. In addition, SBC and Verizon should be required to make their loop and transport facilities available as UNEs regardless of the underlying technology.

C. Eliminate AT&T and MCI as Collocators in SBC and Verizon Wire Centers and Recalculate the Listing of Loop and Transport UNEs

Under the rules adopted in the *Triennial Review Remand Order* ("TRRO"),⁹ loop and transport UNEs are delisted based on a combination of the number of lines in a wire center and/or the number of *unaffiliated* fiber-based collocators.¹⁰ Once a determination is made that these thresholds are met and the relevant UNEs are delisted, SBC and Verizon are alleging that this action cannot be reversed even if the number of lines in the wire center or the number of collocators decrease. However, it is clear that the competitive presence of AT&T and MCI were crucial to the Commission's justification for adopting the wire center/collocator test to determine whether UNEs should be delisted. In addition, the mergers were announced virtually simultaneously with release of the TRRO, and so did not reflect the effect of the mergers on the number of unaffiliated collocators post merger, for purposes of delisting. The Commission must take the mergers into account in the delisting process. Finally, because the Joint Commenters have demonstrated in the record that due to the "collusive effects" of the proposed mergers, SBC and Verizon are highly unlikely to compete with one another in the wholesale market post-merger, the competitive presence of AT&T and MCI will be lost in both SBC and Verizon regions. The Commission, therefore, should adopt a

⁹ *In the Matter of Unbundled Access to Network Elements* (WC Docket No 04-313); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338), Order on Remand, FCC 04-290 (rel. Feb. 4, 2005).

¹⁰ See 47 C.F.R. § 51.319 (a)(4)-(5) for loops and § 51.39 (d)(3) for transport. The term "fiber-based collocator" is defined in § 51.5 to include only carriers that "are unaffiliated with the incumbent LEC."

remedy requiring the recalculation of the wire centers removing both AT&T and MCI as collocators in both the SBC and Verizon regions.

The Commission also should suspend for five years application of the "one-way ratchet" rule for SBC and Verizon. The Commission based this rule on a view of local markets and the state of competition that included the active and ongoing presence of the two largest CLECs, AT&T and MCI. Because the Commission relied on the pre-merger state of competition as basis for the "one-way ratchet" rule, it is only equitable that this rule be suspended while local competition has an opportunity to regenerate.

D. Remove DS1 Loop and Transport Caps

In the TRRO, the Commission limited the number of DS1 loop UNEs that a requesting carrier could obtain to a maximum of ten DS1 loops to a building.¹¹ It also capped DS1 transport UNEs to a maximum of 10 DS1 dedicated transport circuits.¹² Evidence in the TRRO record indicates that competitive providers normally use DS1 loop and loop-transport (EEL) circuits to supply individual customers and do not, therefore, aggregate them onto larger DS3 pipes. As a result, once the DS1 loop or transport cap is breached, the competitive provider will need to turn to the wholesale market. However, if the mergers are consummated, the two largest local wholesale providers, AT&T and MCI, will exit the market – and these competitive providers will then have to rely on much higher-priced special access circuits provided by SBC and Verizon. Consequently, to restore the current competitive environment, the Commission should remove the caps for DS1 loop UNEs for a period of five years.

3. FRESH LOOK

The Alliance for Competition in Telecommunications ("ACTel"), of which most Joint Commenters are members, recently placed in the record a just completed survey by the Center for Survey Research & Analysis at the University of Connecticut concluding that most large business customers of AT&T and MCI believe the proposed mergers would harm them by leading to higher rates, less innovation, and decreased responsiveness to customers.¹³ These findings of harms to business customers from the

¹¹ 47 C.F.R. § 51.319 (a)(4)(ii).

¹² 47 C.F.R. § 51.319 (e)(2)(ii)(A).

¹³ See Center for Survey Research & Analysis, University of Connecticut, *Views of the Proposed AT&T/SBC and MCI/Verizon Mergers: From the Perspective of Fortune 1000 AT&T and MCI Customers* (Sept. 2005) ("Customer Survey").

proposed mergers are supported in reports by investment analysts.¹⁴ It is clear that these proposed mergers will change fundamental expectations of the business customers as to their telecommunications providers and the nature of competition in the marketplace. To alleviate these harms, businesses customers that have existing contracts with AT&T and MCI should be given the opportunity (18 months) to find other sources of supply without incurring any termination penalties or without having to meet revenue or circuit commitments to obtain discounts.

4. CONCLUSION

The Joint Commenters have documented that these proposed mergers of the largest incumbent carriers and their largest competitors will gravely harm the local competitive landscape for business customers. This evidence is most graphically demonstrated by the ACTel *Customer Survey*. Because these mergers are blatantly anti-competitive, the Commission should reject them out-of-hand as failing to serve the public interest, convenience, and necessity. However, if the Commission decides to proceed in the face of this sound and overwhelming evidence, it must adopt sufficient and stringent remedies to offset these harms. The remedies proposed herein are targeted and essential to achieve that objective.

Please do not hesitate to contact the undersigned if there are any questions regarding the foregoing.

Sincerely,



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¹⁴

For instance, in its June, 2005 Equity Research Report on *U.S. Wireline Services*, Bear Stearns writes, "We believe [that because of the proposed mergers] customers are concerned that the price leverage gained since the Telecom Act of 1996 will be eroded. Further, some customers are concerned that customer service, which has generally improved since the passing of the Telecom Act of 1996 and again following the completion of the 271 process, may suffer from a less intense competitive dynamic." *Id.* at 40. In addition, Bear Stearns concludes about the SME market that, "As the mergers are finalized, we expect competition in the SME market to slow down...[and we] believe pricing is likely to stabilize and possibly rise over time. In our view, the megacarriers [SBC and Verizon] may seek to stabilize pricing quickly in order to meet or exceed public merger synergy targets." *Id.* at 41.

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Communications, TDS Metrocom, XO
Communications and Xspedius
Communications*

cc: Chairman Kevin Martin
Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Jonathan Adelstein
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October 18, 2005

Marlene Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Notice of Ex Parte Presentation —
DA 05-656, WC Docket No. 05-65 and DA 05-762, WC Docket No. 05-75**

Dear Ms. Dortch:

This letter is submitted on behalf of Bridgecom International, Inc., Broadview Networks, Inc., Cbeyond Communications, Conversent Communications, CTC Communications, Inc., Lightship Telecom, Inc., NuVox Communications, SNIp LiNK, LLC, Talk America, Inc., TDS Metrocom, LLC, Xspedius Communications, and XO Communications to explain and support a partial remedy to the substantial harms to competition in wholesale markets that will otherwise result if the two mergers proposed in the two proceedings referenced above are approved.

The applications SBC/AT&T and Verizon/MCI have submitted to the FCC for approval of their respective proposed mergers have generated opposition from numerous interested parties for good reason. These two “megamergers” would significantly increase market concentration and render materially more difficult the conditions in which competitive carriers operate as the nation’s two most important competitive telecommunications carriers are absorbed into the two largest incumbent local exchange carriers. The impact of the mergers will be most significant to the special access wholesale market in the territories of Verizon and SBC. It is well documented in the above-referenced dockets that AT&T and MCI today provide easily the largest sources of competition to the special access services offered by SBC and Verizon and that their prices commonly undercut SBC and Verizon special access rates by as much as 80%. It is clear that post-merger, other competitors would *not* “expand or enter with sufficient strength, likelihood and timeliness to render unprofitable an attempted exercise of market power resulting from the

merger.”¹ Rather, all indications are that AT&T and MCI will probably both be lost as competitors in *each* RBOC’s territory if the proposed mergers are concluded. Due to the serious ramifications for competition, the mergers, as proposed, do not serve the public interest, convenience and necessity. Indeed, such a conclusion has been the Commission’s norm for proposed mergers by RBOCs. Since the 1996 Act, the Commission has found every proposed acquisition by a RBOC of another major carrier to be unlawful due to its likely anti-competitive effects.²

Nonetheless, the undersigned parties recognize that the Commission may decide to approve the transactions but use its authority pursuant to Section 214(c) of the Act to impose terms and conditions on the approval tailored to ameliorate the anti-competitive effects of the proposed mergers. The Commission has taken this course in all prior RBOC mergers. In a separate *ex parte* filed yesterday, a large group of concerned parties, including several of the undersigned and other leading members of the IXC, CLEC, enterprise user, and VoIP communities have responded to the variety of conditions and remedies that have been suggested in the record as a means of minimizing the competitive injury that would result from the two mergers.³ Specifically, in that *ex parte*, the signatories thereto offered a consensus recommendation on what actions the Commission should take with respect to SBC’s and Verizon’s *special access services* to offset the removal from the wholesale market of the competitive pressure applied by the metro fiber assets of AT&T and MCI. The undersigned endorse that approach, and hereby adopt the special access conditions proposed therein in *lieu* of prior recommendations that we have made for special access-related behavioral remedies.

The undersigned parties believe the remedies regarding special access that have been proposed are necessary, although *not sufficient*, to alleviate the competitive harm to the local wholesale market that would be caused by the mergers, as proposed. Despite the importance of special access services, and the competitive offerings of providers such as MCI and AT&T which the mergers promise to substantially reduce, most providers of competitive services order critical wholesale inputs (loops and transport) as UNEs, particularly providers

¹ *Applications of NYNEX Corp. and Bell Atlantic Corp. For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, Memorandum Opinion and Order, 12 FCC Rcd 19985, ¶11 (1997) (“NYNEX/Bell Atlantic Merger Order”).

² *See generally*, *GTE/Bell Atlantic Merger Order*, 15 FCC Rcd 14032 (2000); *SBC/Ameritech Merger Order*, 14 FCC Rcd 14712 (1999); *NYNEX/Bell Atlantic Merger Order*, *supra*. *See also* *Cingular/AT&T Wireless Merger Order*, 19 FCC Rcd 21522 (2004).

³ Letter from Ad Hoc Telecommunications Users, *et al.*, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dockets No. 05-65 and 05-75, October 17, 2005 (“Special Access Condition Letter”).

serving small and medium sized business customers. Any palliative relief adopted by the Commission as a condition of approval should be equally available to all competitive providers, regardless of the extent to which they use SBC or Verizon special access services, competitive offerings of AT&T or MCI, or UNEs, to ensure competition in the provision of local services equivalent to pre-merger levels of competition. Accordingly, in light of the shocks that would be administered to wholesale markets in the wake of the proposed mergers, UNE access to high capacity loop and transport inputs must be maintained for a sufficient period of time to allow the markets in the SBC and Verizon regions an opportunity to return to a state of competition comparable to that which existed before the mergers. To ensure consistency and equity, this period of UNE-based relief must be commensurate with any relief afforded with respect to special access. In addition, other UNE merger conditions should apply to foster an environment comparable to pre-merger levels of competition.

The conditions proposed in the Attachment are based on the fact that prices for loop and transport UNE inputs have been set after extensive state proceedings, in which AT&T and MCI typically played the leading role in opposition to ILEC proposals. Like competitive wholesale services available prior to the proposed mergers, UNE prices for these inputs are substantially below the special access prices of SBC and Verizon. If the mergers go forward, the discipline previously imposed in the UNE rate setting process by the participation of AT&T and MCI will be lost. *UNE pricing discipline* to offset the competition lost as a result of these mergers should be established through a cap on UNE rates without putting CLECs in the position of relitigating UNE rates, and the establishment of rate caps on unbundled DS1 and DS3 loops and transport that SBC and Verizon must make available under Section 271 of the Act.

Further, the evidence in this docket demonstrates that the competitive presence of AT&T and MCI took many years to develop and depended upon the uncommon global strength and financial resources of AT&T and MCI. In today's environment, the financial community is reluctant to fund, especially in the short run, activities that would replicate what AT&T and MCI achieved over the past decade. Consequently, there is no reason to believe that "replication" of their competitive presence will be timely, likely, or sufficient. Thus, the Commission must ensure that there is *stability in access to loop and transport UNEs*, which competitive providers rely upon to fill out their networks.

The competitive presence of AT&T and MCI, and the assumption that presence would persist, were crucial to the Commission's justification for adopting in the *Triennial Review Remand Order* ("TRRO"),⁴ the test to determine whether DS1 or DS3 UNEs should be delisted in certain wire centers or along routes between wire centers based on the number of business

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In the Matter of Unbundled Access to Network Elements (WC Docket No 04-313); *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers* (CC Docket No. 01-338), Order on Remand, FCC 04-290 (rel. Feb. 4, 2005).

Marlene Dortch
October 18, 2005
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lines served by the wire centers and the number of fiber-based collocators in those centers. But the mergers were announced immediately after the adoption of the *TRRO*, undermining the Commission's assumption. The Commission intended that only *unaffiliated* collocators would be counted, but AT&T and MCI are almost certainly the two most frequently counted fiber-based collocators.⁵ The Commission should now take the mergers into account in the delisting process within the SBC and Verizon territories, at a minimum. Thus, we propose that SBC and Verizon *reevaluate the impaired status of wire centers and routes excluding MCI and AT&T as fiber-based collocators and using current data*. Moreover, the Commission should waive in the SBC and Verizon territories, for a sufficient period, the "one-way ratcheting" rule⁶ that applies to delisting of DS1 and DS3 loops and transport network elements.⁷ Finally, the specific location limits on unbundled DS1 loops and transport should also be waived because, if the mergers are consummated, the absence of two largest local wholesale providers will upset the price points upon which these limits were set.

To accomplish these objectives, the undersigned parties jointly proposed the measures set forth in the Attachment to this letter. We hope that you find helpful this attempt to formulate major components of a solution to the serious harm to competition posed by the proposed mergers.

⁵ See 47 C.F.R. § 51.319 (a)(4)-(5) for loops and § 51.39 (d)(3) for transport. The term "fiber-based collocator" is defined in § 51.5 to include only carriers that "are unaffiliated with the incumbent LEC."

⁶ SBC and Verizon are alleging that the delisting of DS1 or DS3 loops or transport at a wire center or along a route action cannot be reversed even if the number of lines in the wire center or the number of collocators decrease, once a determination that a wire center or route is no longer impaired at a DS1 or DS3 level.

⁷ See also UNE-based remedies described in Letter of Edward A. Yorkgitis, Jr., Kelley Drye & Warren, LLP, Counsel for Talk America to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dockets No. 05-65 and 05-75, October 11, 2005.

Marlene Dortch
October 18, 2005
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Respectfully submitted,



Brad E. Mutschelknaus
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*Counsel to Bridgecom International, Inc.,
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Communications, Conversent Communications,
CTC Communications, Inc., Lightship Telecom,
Inc., NuVox Communications, SNiP LiNK, LLC,
Talk America, Inc., TDS Metrocom, LLC,
Xspedius Communications, and XO
Communications*

Cc: Chairman Kevin Martin
Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Michelle Carey
Russ Hanser
Jessica Rosenworcel
Scott Bergmann
Tom Navin

ATTACHMENT

CRUCIAL MERGER CONDITIONS RELATED TO UNBUNDLED DS-1 AND DS-3 LOOPS AND TRANSPORT

I. Monthly Recurring and Non-Recurring UNE Charges Must be Capped

The Commission should cap UNE prices in the SBC and Verizon regions for a period of five (5) years at the most recently approved State commission rates. This would not be a freeze, as State commissions should be free to lower the rates if appropriate under the TELRIC or other applicable pricing standard.

- Parties who order or who have ordered unbundled loop (including high capacity and UNE-L loops) and transport elements should have the right, at any time during this five years, to "opt out" of UNE prices and avail themselves of rates available for special access services in the post-merger environment, including those outlined in the Special Access Conditions Letter or other related conditions the Commission may adopt.

II. Where DS1 and DS3 UNEs Are Delisted, Section 271 Unbundled Loops and Transport Must Be Provided

In the SBC and Verizon regions, where DS1 and DS3 loops and transport are delisted, those same loops and transports must be offered on an unbundled basis under Section 271 of the Act. *The Commission should provide, for a period of five (5) years, that such elements are available at 115% of the rates most recently approved by State commissions.*

III. Preserve Existing UNEs For A Transitional Period

In the SBC and Verizon regions, the *status quo ante* (subject to the exception described below) with respect to UNE availability will be preserved for a sufficient period after the mergers are consummated to allow the marketplace to adjust to the loss of AT&T and MCI as competitors. Thus, *no further delisting of loops and transport in SBC and Verizon wire centers or on SBC or Verizon transport routes should be permitted for five (5) years.*

- The Commission should require that SBC and Verizon preserve the *status quo ante* with respect to UNE availability for a period of 5 years.
- In addition, SBC and Verizon should be required to make their loop and transport facilities available as UNEs regardless of the underlying technology.

IV. SBC and Verizon Must Recalculate the Listing of Loop and Transport UNEs

SBC and Verizon must each, within thirty (30) days of any approval order, recalculate the impairment levels in wire centers and on transport routes removing both AT&T and MCI as fiber-based collocators throughout their regions.

- SBC and Verizon should each be required to restate their lists using the most current information for both fiber-based collocators *and* business lines. The Commission should mandate that SBC and Verizon use the most current business line data, namely the most currently reported ARMIS data (which includes data assembled for the carrier's ARMIS reports, even if not yet submitted in that format), UNE-L data, and UNE-P data (for as long as the UNE-P obligations exists in any form). SBC and Verizon may exclude updates for those wire centers and along those routes which they currently report as impaired.
- SBC and Verizon should exclude from their lists any collocators that are simply cross-connected to the fiber of another collocator, including only those collocators which control and operate their own fiber facilities.
- SBC and Verizon, when reporting their updated list information are to exclude non-business lines from ARMIS, UNE-P, *and* UNE-L data. SBC and Verizon should report Centrex business lines by counting every 9 extensions as a single line.
- Further, the Commission also should clarify that SBC and Verizon are required on a going forward basis to monitor the presence of fiber-based collocators and renew offering previously listed UNEs when the specified impairment analysis triggers are no longer satisfied (i.e., not apply a "one-way ratcheting" procedure)
- SBC and Verizon should update their wire center lists on a regular basis, once every three months. This condition would not apply to Tier 3 wire centers, i.e., wire centers that do not have either 24,000 lines or at least 3 fiber-based collocators. Further, for non-Tier 3 wire centers, if SBC or Verizon has reported at least 5000 business lines above the threshold for the status claimed for the wire center or there are at least six (6) collocators, then SBC or Verizon need not update the business line or collocator information every three months. However, if SBC or Verizon later claims a "less-impaired" status for such a wire center based on an increased number of business lines or collocators, then updates every three months would once again be required.
- SBC and Verizon should be required to respond to any CLEC's requests for specific information related to that CLEC that underlies the ILEC's non-impairment list within three (3) business days. SBC and Verizon should provide all requested information, including information that may be customer proprietary network information (CPNI), subject to a reasonable nondisclosure agreement. SBC and Verizon must designate a contact for CLECs to make requests to view

information. Upon receiving a written request for such information, the ILEC should be required to provide that information within three (3) business days, unless the CLEC agrees to a delay.

V. DS1 Loop and Transport Caps Must Be Suspended

The *TRRO* limited the number of DS1 loop UNEs that a requesting carrier could obtain to a maximum of ten DS1 loops to a building from wire centers that are impaired.⁸ It also capped DS1 transport UNEs to a maximum of 10 DS1 dedicated transport circuits along routes which are impaired.⁹ Regarding DS3 loops, the *TRRO* limited the number that a requesting carrier could obtain per building to one (1) DS3 loop.¹⁰ The Commission also limited the number of unbundled DS3 dedicated transport circuits to twelve along any route.¹¹ To maintain the current competitive environment post-merger, *the Commission should remove these caps for DS1 and DS3 loop and transport UNEs for a period of five (5) years.*

⁸ 47 C.F.R. § 51.319 (a)(4)(ii).

⁹ 47 C.F.R. § 51.319 (e)(2)(ii)(A).

¹⁰ 47 C.F.R. § 51.319 (a)(5)(ii).

¹¹ 47 C.F.R. § 51.319 (e)(2)(iii)(B).

**REDACTED – FOR PUBLIC
INSPECTION**

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October 17, 2005

VIA ECFS

REDACTED — FOR PUBLIC INSPECTION

***HIGHLY CONFIDENTIAL INFORMATION
SUBJECT TO SECOND PROTECTIVE ORDER
IN WC DOCKETS NOS. 05-65 & 05-75
BEFORE THE FEDERAL COMMUNICATIONS COMMISSION***

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 - 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation – DA 05-656, WC Docket No. 05-65/
DA 05-762, WC Docket No. 05-75

Dear Ms. Dortch:

In response to requests from staff at the Commission, XO Communications hereby submits the attached highly confidential document [REDACTED]. It is being filed subject to the Protective Orders in Dockets Nos. 05-65 and 05-75 and is deemed to be HIGHLY CONFIDENTIAL. [REDACTED.] It supports previously filed documents by XO Communications and other competitive providers all of which demonstrate the significant competitive harms that will arise if the proposed mergers of SBC-AT&T and Verizon-MCI are approved by the Commission.

KELLEY DRYE & WARREN LLP

Marlene H. Dortch
October 17, 2005
Page Two

HIGHLY CONFIDENTIAL INFORMATION
SUBJECT TO SECOND PROTECTIVE ORDER
IN WC DOCKETS NOS. 05-65 & 05-75
BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

REDACTED – FOR PUBLIC INSPECTION

An original and one copy of this notice of oral ex parte presentation is being filed with the Secretary's office pursuant to 47 C.F.R. 1.1206.

Sincerely,



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Counsel for XO Communications

Attachment: HIGHLY CONFIDENTIAL DOCUMENT – [REDACTED]

cc: Jessica Rosenworcel
Scott Bergmann
Russ Hanser
Tom Navin
Marcus Maher
Gail Cohen
Don Stockdale

REDACTED – FOR PUBLIC INSPECTION

THE INFORMATION ON THIS CHART IS DERIVED (REDACTED).

ALL INFORMATION CONTAINED HEREIN SHOULD BE CONSIDERED HIGHLY CONFIDENTIAL AND PROPRIETARY.

**HIGHLY CONFIDENTIAL INFORMATION - SUBJECT TO SECOND PROTECTIVE ORDER IN
WC DOCKET NO. 05-65 & 05-75 before the Federal Communications Commission.**

HIGHLY CONFIDENTIAL

HIGHLY CONFIDENTIAL